THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO.27671 of 1995

21st September 2005

Between:

G.v.S.Krishna Rao, S/o.G.P.V.Subba Rao, 42 years, Amalapuram, East Godavari District.

...PETITIONER

AND

1. The Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad. And 2 others.

...RESPONDENTS

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO.27671 OF 1995

ORDER:

This Writ Petition is filed by the petitioner for a writ of Mandamus seeking to declare that the action of the respondents in not according approval to his promotion to the post of Senior Assistant in the second respondent-College as illegal and arbitrary after declaring that the action of respondent Nos.1 and 2 in constituting a fresh Departmental Promotion Committee (DPC) for considering the case of the third respondent for promotion as illegal and arbitrary.

The petitioner was appointed as a Store Keeper on 01.09.1978. He contends that he passed B.Com., and Typewriting examination in Higher Grade both in English and Telugu and also passed Departmental Tests. Therefore, he is eligible and entitled to be promoted as Senior Assistant. The third respondent who is working as a Steno-

Typist in the second respondent-College was also one of the eligible candidates for the post of Senior Assistant. The vacancy of Senior Assistant had arisen on 09.07.1990 consequent to the death of the incumbent. When the post was sought to be filled up, the third respondent submitted a letter dated 26.11.1990 to the Secretary and Correspondent of the second respondent-College stating that he was enjoying the scale attached to the special promotion post and after completion of 15 years of service, he would be put to heavy financial loss therefore he may not be disturbed from the post he was holding. The petitioner further submitted that he is the next person qualified to be promoted. The management constituted a Departmental Promotion Committee (DPC) and the DPC met on 13.07.1991 considering the case of the eligible candidates and recommended for promotion of the petitioner to the post of the Senior Assistant along with other promotions. The management forwarded the proceedings of the DPC to the first respondent through the letter dated 16.07.1991 for according approval. When the matter was pending before the Commissioner, the third respondent made an application stating that he was not considered for promotion. The Special Officer of the college addressed a letter on 10.09.1992 to the first respondent to accord approval to the promotion made by the DPC on 13.07.1991. In the said letter, the Special Officer gave the particulars of all the persons selected by the DPC including the petitioner. When the first respondent called for certain information through the letter dated 16.12.1992 for not considering the claims of the third respondent for promotion, the second respondent sent a reply on 27.04.1993 stating that the case of the third respondent was not considered for promotion in view of his letter dated 26.11.1990. In pursuance of the representation made by the third respondent on 24.04.1993, the matter was kept pending and the

recommendation made by the DPC was not approved by the first respondent inn respect of the promotion of the petitioner while approving the promotion of the other persons recommended by the said DPC. The petitioner therefore filed the Writ Petition expressing grievance for not clearing the promotion to the post of Senior Assistant.

The respondents resisted the petition by contending that as the third respondent was admittedly senior to the petitioner and he made a representation that his case was not considered, the promotion of the petitioner was not cleared.

The learned counsel for the petitioner, during the course of the arguments, submitted that during the pendency of the Writ Petition, a separate DPC was constituted and the case of the third respondent was considered and he was promoted as Senior Assistant. He further submitted that there is another vacancy of Senior Assistant arisen and the post is still vacant. Therefore, it would be appropriate if the Hon'ble Court gives a direction to the second respondent to consider the case of the petitioner for promotion to the post of Senior Assistant.

It is an undisputed fact that the third respondent is senior to the petitioner. The only contention on the basis of which the petitioner is claiming promotion is the letter said to be given by the third respondent on 26.11.1990 requesting the second respondent not to disturb him from the present position. Subsequently, DPC recommended the name of the petitioner for promotion but before the first respondent approving the recommendation of the DPC, the third respondent made an application expressing grievance for not considering his case for promotion. The proceedings of the DPC

dated 13.07.1991 do not disclose whether the relinquishment said to be given by the second respondent was placed before the DPC or whether the DPC, by taking into consideration the said letter, ignored the candidature of the third respondent. Another letter said to be written by the Special Officer and Principal of the second respondent-College to the first respondent on 27.04.1993 also does not disclose whether the letter given by the third respondent was placed before the DPC for consideration. There is no material to show as to what was the action taken by the second respondent in pursuance of the letter given by the third respondent relinquishing his promotion. It is an established principle that before the appointing authority passing appropriate orders affecting the right of a particular employee, he has every liberty to withdraw the letter if any given by him. In the present case also, the letter was presented by the third respondent before the first respondent passing orders approving the recommendations of the DPC. The learned counsel for the petitioner drew the attention of this Court to Rule 28 of the A.P. State and Subordinate Service Rules which reads as follows.

> **28. Relinquishment of rights by members:**
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> Any member of a service may, in writing, relinquish any right or privilege to which he may be entitled to, under these rules or the special rules, if in the opinion of the appointing authority such relinquishment is not opposed to public interest. Such relinquishment once made will be final and irrevocable. Nothing contained in these rules or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished:
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> Provided that no conditional relinquishment or relinquishment of right for a temporary period shall be permitted.

The petitioner is entitled to take the rescue of this Rule after getting promotion

and when it was proposed to be withdrawn. Under such circumstances it can be said that the interests of the petitioner are affected and it is against the public policy. But since no such proceedings were issued in the present case, it cannot be said that the rights or interests of the petitioner are affected. In the light of the above circumstances, the non-approval of the recommendation made by the DPC for promotion of the petitioner cannot be termed as illegal or arbitrary.

In the light of the above and facts and circumstances, the Writ Petition is dismissed. The dismissal of this Writ Petition would not in any way come in the way of the second respondent considering the case of the petitioner for promotion as a Senior Assistant either in the existing or future vacancies.

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(DR G.YETHIRAJULU, J)

21st September 2005

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